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U.S. Customs and Border Protection

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MEMORANDUM FOR: Directors, Field Operations
Center Directors

FROM: Reed A. Stephenson
Acting Executive Director
Trade Policy and Programs
Office of Trade

SUBJECT: UPDATED GUIDANCE: Post-importation Claims for Preferential Tariff Treatment

The purpose of this memorandum is to provide you with guidance concerning acceptable methods for submission of post-importation preference claims in light of a recent decision issued by the Court of International Trade.[1] This memorandum also serves to amend guidance, issued by this office on August 11, 2014.

BACKGROUND

Historically, importers have used various post-importation mechanisms to claim duty preferences under various free trade agreements, trade preference legislation, and certain tariff provisions in Chapter 98, Harmonized Tariff Schedule of the United States. These mechanisms include Post-Entry Amendments (PEAs), Post Summary Corrections (PSCs), protests under 19 USC §1514 and post-importation claims under 19 USC §1520(d).

On August 11, 2014, Customs and Border Protection (CBP) issued guidance specifying that when the implementing legislation for several preference programs specifically provides for post-importation claims, set forth in 19 USC §1520(d), such claims are the only appropriate mechanism to seek preference when not claimed at the time of entry.

Further, in the guidance CBP determined that if a preference program did not have a statutory post-importation mechanism, referenced in 19 USC §1520(d), importers were precluded from

[1] *Zojirushi America Corp v. U.S.*, Slip Op. 16-78 (August 4, 2016).

claiming post-importation duty preferences through protests under 19 USC §1514.[2] Therefore, CBP instructed ports to reject as non-protestable any initial preference claims made under 19 USC §1514. Through the guidance below, CBP now amends that memorandum.

GUIDANCE

General

Pursuant to the earlier-referenced decision by the Court of International Trade,[3] for those preference programs that do not specifically provide for claims under the statutory post-importation mechanism of 19 USC §1520(d), CBP will permit use of the protest mechanism set forth in 19 USC §1514 to submit initial post-importation preference claims. CBP will continue to allow unliquidated entries to be amended by filing a PEA or PSC prior to liquidation in accordance with current PEA and PSC procedures.

For preference programs that by law have a post-importation provision, a 1520(d) post-importation claim remains the only appropriate mechanism to seek preference when not claimed at the time of importation.

For clarity and ease of reference, below is a table of the existing preference programs and the method by which a claim may now be made after importation.

19 USC §1520(d)		**19 USC §1514, PEA, or PSC**		
CAFTA-DR	NAFTA	AGOA	Civil Aircraft Agreement	Jordan FTA
Chile FTA	Oman FTA	Australia FTA	GSP	Morocco FTA
Colombia TPA	Panama TPA	Bahrain FTA	Insular Possessions	Pharmaceutical
Korea FTA	Peru TPA	CBERA	Israel FTA	Products Agreement
		CBTPA	Uruguay Round Concession on Intermediate Chemicals for Dyes	Singapore FTA

19 USC §1514 Claims Rejected as Non-Protestable

In compliance with the now-amended memorandum, dated August 11, 2014, ports may have rejected as non-protestable (rather than denied) initial post-importation preference claims made under 19 USC §1514. Pursuant to the decision by the Court of International Trade in Zojirushi America Corp. v. U.S., in order to assist CBP in processing protests previously rejected as non-protestable, importers are requested to resubmit their protests to the appropriate field offices within 180 days of the issuance of this guidance.

Guideline Updates

The Office of Trade will be revising all internal and external guidelines applicable to preference programs to permit filing of claims under 19 USC §1514. This memorandum supersedes any

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[2] CBP's decision was based on its interpretation of *Xerox Corp v. U.S.*, 423 F.3d 1356 (2005) and *Corrpro Companies, Inc. v. U.S.*, 433 F.3d 1360 (2006). *See* Headquarters Ruling Letter (HRL) H193959, dated July 30, 2012.

[3] *See Zojirushi America Corp v. U.S.*

conflicting guidance previously published, including, but not limited to, the now amended memorandum, dated August 11, 2014, implementing instructions for free trade agreements, the *FTA Guidelines*, and the *Side-by-Side Comparison of Free Trade Agreements and Selected Preferential Trade Legislation Programs*.

Copies of this memorandum should be made available to Port Directors, Assistant Port Directors, Center Directors, Import and Entry Specialists, Brokers, Importers, and other interested parties.

If there are any questions or concerns regarding this matter, please contact Craig T. Clark, Director, Textiles and Trade Agreements Division, at (202) 863-6657 or via email at fta@dhs.gov.

cc: Assistant Directors, Field Operations
Director, Industry & Account Management Division
OFO-Trade Operations